

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINETTE GARRISON
Claimant

VS.

BEECH AIRCRAFT CORPORATION
Respondent
Self-Insured

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Docket No. 168,049

ORDER

Respondent requested review of an Order entered by Administrative Law Judge Shannon S. Krysl dated February 22, 1996. The Appeals Board heard oral argument in Wichita, Kansas on July 10, 1996.

ISSUES

The following issue was stated in the respondent's Application for Review:

"Administrative Law Judge Krysl exceeded her administrative law judge's jurisdiction in determining that the payout of claimant's Award, which allegedly required that all back due and owing amounts were to be paid once the claim was appealed to the Kansas Court of Appeals on September 1, 1995, was a substantive right of the claimant's which had vested prior to July 1, 1993."

After the respondent filed its Application for Review, the claimant filed a Motion for Dismissal of Respondent's Application for Review. The claimant's Motion alleged that the respondent's Application for Review was not timely filed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record, considering the briefs and the arguments of the parties, the Appeals Board finds as follows:

This matter came before the Administrative Law Judge on the motion of the claimant for respondent to pay all compensation due from an award of the Appeals Board during the pendency of an appeal to the Kansas Court of Appeals.

The Administrative Law Judge sustained claimant's motion finding that all compensation was due and payable by the respondent during the pendency of an appeal from the Appeals Board to the Kansas Court of Appeals. The Administrative Law Judge

found that claimant's right to workers compensation benefits vested on the date of her accident, July 16, 1991. Accordingly, the amount of compensation payable during an appeal from an award of the Administrative Law Judge to the Kansas Court of Appeals was determined by the statute in effect on the date of claimant's accident, K.S.A. 1991 Supp. 44-556(c), and not the current statute found at K.S.A. 44-556(c).

Prior to reviewing the merits of this appeal, the Appeals Board will first address claimant's Motion for Dismissal of Respondent's Application for Review. K.S.A. 44-551(b)(1), as amended by S.B. 649 (1996), is the statute that grants Appeals Board review and provides in pertinent part:

"All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the board upon written request by any interested party within 10 days. . . ."

The Administrative Law Judge's Order that is the subject of this appeal was entered on February 22, 1996. Accordingly, the effective date of the Order was the day after or February 23, 1996. See K.A.R. 51-18-2. Ten days after the effective date of that Order was March 4, 1996. Respondent filed its Application for Review on March 5, 1996 and argues that it was timely. K.A.R. 51-17-1 provides that if the last day falls on a Saturday or Sunday or a statutory holiday, it is to be excluded. Respondent argued that the intent of K.A.R. 51-17-1 was obviously to provide a party at least seven business days for timely filing of an Application for Review. Accordingly, the respondent argued that although K.A.R. 51-17-1 only specifies that the last day is excluded if it falls on a Saturday or Sunday or a statutory holiday, the first day also should be excluded if the party is not provided at least seven business days for the timely filing of an Application for Review. Therefore, the respondent concluded that since both February 24, 1996 and February 25, 1996 fell on Saturday and Sunday, the first day that should have been counted would have been Monday, February 26, 1996. Ten days thereafter was March 6, 1996. Respondent contended its Application for Review was, therefore, timely as it was filed on March 6, 1996.

The Appeals Board disagrees with the respondent and finds that the respondent's Application for Review filed on March 5, 1996 was out of time. K.A.R. 51-17-1 clearly states that only the last day, and not the first day, is to be excluded if it falls on a Saturday or Sunday or a statutory holiday. The effective date of the Administrative Law Judge's Order was February 23, 1996, the day following the date of the Administrative Law Judge's Order. The tenth day after the effective date, February 23, 1996, was March 4, 1996. Accordingly, the respondent's Application for Review having been filed on March 5, 1996 was filed 11 days after the effective date of the Order and therefore, the Application for Review was not timely filed. In an administrative proceeding, the time for taking an administrative appeal, as described by statute, is jurisdictional, and delay beyond the statutory time is fatal to an appeal. State Bank Commissioner v. Emery, 19 Kan. App. 2d 1063, Syl. ¶ 1, 880 P.2d 783 (1994). Accordingly, since respondent failed to timely file its Application for Review, the Appeals Board finds it does not have jurisdiction to review the Administrative Law Judge's Order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by the respondent on March 5, 1996, is out of time and should

be, and is hereby, dismissed. The Order of Administrative Law Judge Shannon S. Krysl dated February 22, 1996, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Terry J. Torline, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director